

**Background and Purpose**

LDOTD requested that the draw remain permanently closed. Navigation requiring openings is non-existent and the bridge has not been opened for twenty years. There is no commercial navigation on the waterway in the vicinity of the bridge crossing. Vertical clearance of the bridge in the closed position is 6 feet above mean high water and 20 feet above mean low water. The occasional small recreational boat which uses the waterway can transit the bridge without requiring an opening. Permitting the permanent closure of the draw will result in a significant savings in maintenance costs with no adverse effect on navigational traffic.

**Discussion of Comments**

The National Marine Fisheries Service and Louisiana Department of Wildlife and Fisheries offered no objection to the proposed rule change. One letter of objection was received from an individual completing construction of a boat above the bridge site. The bridge owner went to considerable expense to open the bridge to allow the boat to pass. As a result, the lone objector has withdrawn his objection to the proposed rule change.

**Regulatory Evaluation**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1 (series), this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

For the reasons set out in the preamble, the Coast Guard amends 33 CFR 117 as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.493 is revised to read as follows:

**§ 117.493 Sabine River.**

(a) The draws of the Southern Pacific railroad bridge, mile 19.3 near Echo and the Kansas City Southern railroad bridge, mile 36.2 near Ruliff, shall open on signal if at least 24 hours notice is given.

(b) The draw of the S12 bridge, mile 40.8 at Starks, need not be opened for passage of vessels.

Dated: March 16, 1995.

**R.C. North,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

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**33 CFR Part 162**

[CGD09–95–007]

**Inland Waterways Navigation Regulations: Speed Limits on Connecting Waters From Lake Huron to Lake Erie**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Commander of the Ninth Coast Guard District, in cooperation with Canadian authorities, is temporarily amending the speed limits on connecting waters from Lake Huron to Lake Erie. A similar temporary rule was in effect during the 1993 and 1994 navigation seasons. The speed limits in this area are determined in large part by concerns about wake damage. However, lesser wakes are created by nondisplacement power vessels and those speed limits may unnecessarily impede their passage. This temporary rule will allow nondisplacement power vessels, less than 100 gross tons, to exceed the normal speed limits subject to certain restrictions.

**DATES:** This regulation is effective at 12:01 a.m. on April 1, 1995 and terminates at 12 midnight on November 30, 1995. Comments must be received on or before May 31, 1995.

**ADDRESSES:** Comments and supporting materials should be mailed or delivered to Lieutenant Katherine Weathers, Assistant Chief of the Marine Port and Environmental Safety Branch, Ninth Coast Guard District, Room 2069, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, (216) 522–3994. Please reference the name of the proposal and the docket number in the heading above. If you desire acknowledgment of your mailed comment, please include a stamped self-addressed envelope or postcard for that purpose. Comments and materials received will be available for public inspection at the above location from 9 a.m. to 3 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Katherine E. Weathers, Assistant Chief of the Marine Port and Environmental Safety Branch, Ninth Coast Guard District, (216) 522–3994.

**SUPPLEMENTARY INFORMATION:****Request for Comments**

Comments on this regulation, including comments on the prior version in effect during the 1993 and 1994 navigation seasons, are invited. A public hearing is not anticipated, however will be considered if specific requests are received. Requests should indicate how such a hearing would

contribute information or views which cannot be received in written form. Additionally, if it appears that a public hearing would contribute to revisions or further refinements of the rulemaking, the Coast Guard may decide that a hearing is appropriate, and will notice the public via the **Federal Register**.

#### Discussion of Comment Period

A notice of proposed rulemaking was not published for this temporary regulation, and good cause exists, pursuant to 5 U.S.C. 553(b)(3)(B), for making it effective less than 30 days after **Federal Register** publication. A notice of proposed rulemaking is unnecessary because this regulation is, with minor amendments, the same as the 1994 regulation promulgated on April 7, 1994 (59 FR 16563). No adverse comments were received during the 1994 trial period.

Additionally, further delay this season would hamper commerce by delaying temporary regulatory relief for small businesses. Therefore, 30 days notice is not required under 5 U.S.C. 553(d)(1) because this rule is a substantive action which "relieves a restriction" on commerce.

#### Background and Purpose

Current regulations in 33 CFR 162.138 which apply to connecting waters from Lake Huron to Lake Erie set the maximum speed for vessels 20 meters or more in length at limits ranging from 4 to 12 statute miles per hour in various areas. One of the primary purposes of these speed regulations is to limit wake damage, but they were not written to account for the substantially lesser wake-generating characteristics of nondisplacement vessels. In fact, certain vessels designed for nondisplacement operation which have conducted test operations in the waterway would generate larger wakes at the lower speed now required because they would be forced to operate in a displacement mode. During the 1993 and 1994 navigation season, the Commander of the Ninth Coast Guard District temporarily amended 33 CFR 162.138 in order to allow trial runs of these nondisplacement vessels (58 FR 17526, April 5, 1993 and 59 FR 16563, April 7, 1994). A corresponding exemption was granted by the Central Region of the Canadian Coast Guard, which has authority over the Canadian waters in the same area. During the 1993 trial period, one complaint was received alleging excessive wake. Upon investigation, it appeared that the vessel gave the impression of creating an excessive wake because of its relatively high rate of speed during a sharp turn.

The Coast Guard was unable to determine if in fact an excessive wake was generated in that one case. There was no damage, and the operator agreed to modify similar maneuvers in the future in order to avoid any problem. No subsequent complaints of any kind were received by the Canadian Coast Guard or the U.S. Coast Guard. During the 1994 trial period, there were no complaints received by either the Canadian Coast Guard or the U.S. Coast Guard. It should be noted that this proposed temporary amendment to the speed regulations for nondisplacement vessels does not in any way excuse the general obligation to exercise good seamanship when maneuvering in close quarters or the responsibility for damage which might be caused by a wake which is excessive in a location close to other vessels or shore structures.

With concurrence from the Director General of the Canadian Coast Guard Central Region, the Commander of the Ninth Coast Guard District considers it appropriate to institute this temporary regulation. This temporary regulation will assist commerce by allowing nondisplacement vessel operators to commence operation for the 1995 navigation season while awaiting the adoption of a permanent amendment to these regulations. A Notice of Proposed Rulemaking for a permanent change was published in the **Federal Register** on March 27, 1995. The Coast Guard is setting an upper limit of 40 statute miles per hour for nondisplacement vessels 20 meters or more in length but less than 100 gross tons, and is allowing such nondisplacement vessels to overtake other vessels when otherwise safe. All other navigational regulations will remain in force, and the use of this temporary rule for nondisplacement vessels is subject to the prior approval of the Captain of the Port in order to insure that the special rule is only used by vessels which are of suitable design and which are in fact operated safely in this waterway.

#### Drafting Information

The principal persons involved in drafting this document are Lieutenant Katherine E. Weathers, and Commander M. Eric Reeves, Project Managers, Ninth Coast Guard District Marine Safety Division, and Lieutenant Karen E. Lloyd, Project Counsel, Ninth Coast Guard District Legal Office.

#### Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, it is

categorically excluded from further environmental documentation.

#### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This regulation does not impose any new regulatory requirements in an area not heretofore regulated by the Federal Government, and does not impose any requirements or restrictions on State or local authorities. This regulation specifically provides that it does not preempt any state or local law or regulation setting a lower speed limit applicable to nondisplacement vessel in areas under the jurisdiction of such state or local authority.

#### Regulatory Evaluation

This regulation is considered to be non-major under Executive Order 12866 on Regulatory Planning and regulatory policies and procedures (44 FR 11034 February 26, 1979).

#### Small Entities

The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. In fact, the Coast Guard is making this amendment in part in order to avoid causing the existing regulations to have an unintended economic impact on a new mode of commercial operation. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### List of Subjects in 33 CFR Part 162

Inland waterways, Navigation.

#### Regulations

In consideration of the foregoing, the Coast Guard is amending part 162 of title 33, Code of Federal Regulations as follows:

#### PART 162—[AMENDED]

1. The authority citation for part 162 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 49 CFR 1.46.

2. A temporary § 162.T139 is added as follows:

**§ 162.T139 Nondisplacement vessels under 100 gross tons.**

(a) Notwithstanding §§ 162.134 and 162.138(a), nondisplacement vessels 20 meters or more in length but under 100 gross tons may operate in the nondisplacement mode at speeds not more than 40 miles per hour (34.8 knots) and may overtake other vessels—

(1) during daylight hours (sunrise to sunset),

(2) when conditions otherwise safely allow, and

(3) when approval has been granted by the Coast Guard Captain of the Port, Detroit or Commander of the Ninth Coast Guard District prior to each transit of the area.

(b) In this section, *nondisplacement mode* means a mode of operation in which the vessel is supported by hydrodynamic forces, rather than displacement of its weight in the water, to an extent such that the wake which would otherwise be generated by the vessel is significantly reduced.

(c) The Captain of the Port or the District Commander may deny approval for operations under paragraph (a) of this section if it appears that the design and operating characteristics of the vessels in question are not safe for the designated waterways, or if it appears that operations under this section have become unsafe for any reason.

(d) This section becomes effective at 12:01 a.m. on April 1, 1995 and terminates at 12 midnight on November 30, 1995.

Dated: March 30, 1995.

**Rudy K. Peschel,**

*Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.*

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**33 CFR Part 165**

[CGD02-95-012]

RIN 2115-AA97

**Safety Zone; Lower Mississippi River, Victoria Bend**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Mississippi River between mile markers 593.0 and 597.0. The zone is needed to protect vessel traffic from a collision hazard created by weir dike construction operations. Entry of vessels or persons into this zone is prohibited except as authorized by the Captain of the Port, Memphis, TN.

**DATES:** This regulation becomes effective at 7 a.m. on April 17, 1995 and terminates at 1 a.m. on July 30, 1995.

**FOR FURTHER INFORMATION CONTACT:**

LT Byron Black, Chief of Port Operations, Coast Guard Captain of the Port Memphis, 200 Jefferson Avenue, Suite 1301, Memphis, TN 38103, Phone: (901) 544-3941.

**SUPPLEMENTARY INFORMATION:****Background and Purpose**

At approximately 7 a.m. on April 17, 1995, the U.S. Army Corps of Engineers will commence weir dike construction operations at Lower Mississippi River mile 595.2 on the left descending bank. The construction is expected to be completed in approximately 90 days from the commencement date. The navigable channel will be blocked during the operations. A safety zone will be established on the Lower Mississippi River from mile marker 593.0 to 597.0 in order to facilitate safe vessel passage. All vessels shall establish passing arrangements with the contact pilot onboard the M/V BILL RODGERS, via VHF Marine Band Radio, Channel 13, prior to entering the safety zone and shall abide by the conditions of the arrangement. Entry of vessels or persons into this zone without a passing arrangement with the contact pilot is prohibited except as authorized by the Captain of the Port, Memphis, TN.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest. Immediate action is necessary to facilitate construction operations during the present low water level of the river. Harm to the public and/or environment may result if vessel traffic is not controlled during construction operations.

**Regulatory Evaluation**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under

paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

**Collection of Information**

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

**PART 165—[AMENDED]**

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; and 49 CFR 1.46.

2. A new temporary section § 165.T02-012 is added to read as follows:

**§ 165.T02-012 Safety Zone; Lower Mississippi River, Victoria Bend.**

(a) *Location.* The following area is a Safety Zone: All waters within the shoreline and boundaries of Lower Mississippi River miles 593.0 to 597.0.

(b) *Effective dates.* This section becomes effective at 7 a.m. on April 17, 1995 and terminates at 1 a.m. on July 30, 1995.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port.

The Captain of the Port will notify the public of changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).